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No. 187

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Supreme Court of the United States

OCTOBER TERM, 1962

BROTHERHOOD OF LOCOMOTIVE ENGINEERS, an unincorporated association; G. W. MINSON, individually and as Secretary, General Committee of Adjustment, Chicago and North Western Railway Company, and Local Chairman of said Association; A. O. BEST, individually and as Local Chairman of said Association; HOWARD R. GILLETTE, individually and as Local Chairman of said Association; R. B. SEGER, individually and as Secretary and Local Chairman of said Association; BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, an unincorporated association; W. I. CARREL, individually and as Vice Chairman of said Association; K. O. WHITE, individually and as Local Chairman of said Association; VAUGHN R. WARD, individually and as General Chairman of said Association; E. H. DONNELLY, individually and as Vice Chairman of said Association; J. R. MAYER, individually and as Local Chairman of said Association; BROTHERHOOD OF RAILROAD TRAINMEN, an unincorporated association; W. A. BURKE, individually and as Vice Chairman and Local Chairman of said Association; T. A. MILLER, individually and as Local Chairman of said Association; E. STOUVENEL, individually and as Local Chairman of said Association; M. VITIRITTO, individually and as Local Chairman of said Association; R. W. STANLEY, individually and as General Chairman of said Association; H. L. HEMPHILL, individually and as Local Chairman of said Association; SWITCHMEN'S UNION OF NORTH AMERICA, AFL-CIO, an unincorporated association; E. H. KANE, individually and as General Chairman of said association; E. K. BRAINERD, individually and as Local Chairman of said Association, *Petitioners*

v.

CHICAGO AND NORTH WESTERN RAILWAY COMPANY, A Corporation, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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Petitioners, Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen and Enginemen, Brotherhood of Railroad Trainmen, Switchmen's

Union of North America, unincorporated associations, and certain officers of each of these labor organizations representing employees of the Chicago and North Western Railway Company, pray that a writ of certiorari issue to review the judgment entered in this case by the United States Court of Appeals for the Eighth Circuit which affirmed the judgment of the District Court of the United States for the Southern District of Iowa.

OPINIONS BELOW

The opinion and judgment of the District Court (R. 331-346) is reported in 202 F. Supp. 277, and is reproduced at pages 1a-17a of the Appendix to this Petition.[1] The opinion of the United States Court of Appeals is reported in 314 F. 2d. 424, and is reproduced at pages 18a-34a of the Appendix to this Petition.

GROUNDS ON WHICH JURISDICTION OF THIS COURT IS INVOKED

The judgment of the Court of Appeals sought to be reviewed was dated and entered March 7, 1963 (Appendix p. 34a(1)). A timely Petition for Rehearing was filed March 25, 1963, and was denied by order made and entered April 3, 1963 (Appendix p. 34a(2)). By orders entered on April 9 and May 4, 1963, the Court of Appeals entered a stay of its mandate to June 8, 1963, the stay to continue in force upon the filing of a writ of certiorari with this court. The statutory provision believed to confer jurisdiction of this court is 28 U.S.C., Section 1254.

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[1] The printed record before the United States Court of Appeals for the Eighth Circuit, including the proceedings in that court, has been certified to this court. The Appendix to this petition is separately printed and filed in accord with rule 23(1) of the rules of this Court.

QUESTIONS PRESENTED FOR REVIEW

1. May a Federal court adjudicate the interpretation and application of a railway collective agreement authorized by Section 5(2)(f) of the Interstate Commerce Act and providing voluntary arbitration of certain disputes arising thereunder, and enter a judgment for specific performance of the agreement as so interpreted by the court, or should a dispute concerning its interpretation and application first be determined by the National Railroad Adjustment Board as provided by Section 3 of the Railway Labor Act?

2. In a Section 5(2) transaction under the Interstate Commerce Act, are the obligations of collective bargaining agreements negotiated pursuant to the Railway Labor Act "restraints, limitations or prohibitions of law" from which rail carriers are relieved by Section 5(11) of the Interstate Commerce Act?[2]

3. In a Section 5(2) transaction under the Interstate Commerce Act, are the procedures and provisions of the Railway Labor Act "restraints, limitations or prohibitions of law" from which rail carriers are relieved by Section 5(11) of the Interstate Commerce Act?

4. Do Sections 5(2)(f) and 5(11) of the Interstate Commerce Act vest power in the Interstate Commerce Commission over railway labor disputes, including the power to nullify the obligations of railway collective bargaining agreements and impose compulsory arbitration of such labor disputes occurring because of carrier proposals for operational changes following Com-

[2] A sale and purchase of assets had been approved by the Interstate Commerce Commission and had been consummated by the two railroads, parties thereto, prior to the inception of the labor dispute here involved between petitioners and respondent.

mission approval and consummation of a rail purchase under Section 5(2) of the Interstate Commerce Act, so as to supersede the provisions of the Railway Labor Act and the functions of the National Railroad Adjustment Board thereunder?

STATUTES INVOLVED

The statutes involved are the Railway Labor Act (45 U.S.C., Sec. 151, *et seq.*), the pertinent portions of which are printed in the Appendix at page 35a; the Interstate Commerce Act (49 U.S.C., Sec. 1, *et seq.*), the pertinent portions of which are printed in the Appendix at page 35a, *et seq.*; and Section 301 of the Labor Management Relations Act (29 U.S.C., Sec. 185 reproduced in part in the Appendix at page 38a.

STATEMENT OF THE CASE

On May 12, 1960, the Chicago and North Western Railway Company[1] filed an application under Section 5 (2) of the Interstate Commerce Act requesting the Interstate Commerce Commission to approve its proposed purchase of the properties and franchises of the Minneapolis and St. Louis Railway (R. 84-131). The agreement of sale between the two railroads was attached to the application (R. 106-127). It specified, among other things, that North Western would assume all obligations and liabilities of M & St L, including its collective bargaining agreements (R. 109, 111-112).

On August 1, 1960, the Interstate Commerce Commission, through an examiner, conducted a one-day hearing on the application (R. 132-197, 226). At the hearing North Western stated that it planned to operate

[1] The Chicago and North Western Railway will hereinafter be referred to as "respondent" or as "North Western". Petitioners will sometimes be referred to as "the employees".

the M & St L as a unit or separate division of North Western (R. 150). Respondent did not offer any evidence or refer to any plan for changing any of the work assignments or working conditions of the employees involved here and no suggestion or request was made to the Commission that the seniority rights of these employees, as provided in existing collective agreements, should be changed or modified (R. 132-197).

On August 4, 1960, a "Stipulation and Agreement" between North Western and the Railway Labor Executives' Association, representing among others the petitioners herein, was filed with the Commission (R. 200-224). It recited that the parties had reached an agreement "pursuant to the provisions of the Railway Labor Act, as amended", which provided protection of the interests of the employees and that any report or order issued by the Commission "may so state" (R. 200-201). The agreement referred to was the "Agreement of May, 1936, Washington, D. C.", commonly known as the Washington Job Protection Agreement,[1] as amended by the agreement of August 4, 1960, attached to the stipulation (R. 201, 205-224).

On October 13, 1960, the Commission issued its report and order authorizing the proposed acquisition of the M & St L by North Western (R. 225-244). The report contains the following regarding employees (R. 238):

> "Applicants also entered into a stipulation with railway labor organizations represented by the Railway Labor Executives' Association for the protection of all employees of the applicants whose

[1] Recognized by this court as a railway collective bargaining agreement in *Railway Labor Executives' Association* v. *United States*, 339 U.S. 142, 147 and in *Railroad Telegraphers* v. *Chicago & N. W. R. Co.*, 362 U.S. 330, 337-339.

bargaining representatives are members of the association. The stipulation is of the character contemplated by section 5 (2)(f) of the act for the protection of railway employees who may be adversely affected by the transactions authorized. As to the employees covered by the stipulation, no conditions in our orders are necessary. As employees of the applicants not covered by the aforesaid stipulation, we will prescribe for their protection conditions similar to those set forth in Oklahoma Ry. Co. Trustees Abandonment, 257 I.C.C. 177."

The purchase and sale of the assets of the M & St L to Northwestern was consummated by the two railroads on October 31, 1960 (R. 4). North Western took over the M & St L employees and thereafter dealt with their collective bargaining representatives under the terms of the M & St L collective agreements which North Western adopted (R. 3, 246, 248).

The dispute involved in this litigation commenced on December 13, 1960. By letter of that date, North Western notified the employees here involved (both North Western and former M & St L) that it contemplated "coordinating yard operations" at Marshalltown, Iowa, (R. 248-250).[5] It was undisputed

[5] While the evidence in this case was, by agreement, limited largely to Marshalltown, the respondent also proposed similar "coordinations" at other points on the railroad which it estimated would "directly affect" a total of 304 employees from the ranks of engineers, firemen and yard switchmen (R. 250, 305, 307). In contrast, North Western testified in the proceedings before the Interstate Commerce Commission that it did not contemplate any substantial economies through "consolidations;" that M & St L would be operated as "a separate division" or "unit", and that at a maximum the transaction would involve only 125 to 150 employees "most of whom would be in the accounting department of the M & St L" (R. 148-150).

that the operational changes proposed by North Western would either violate the seniority rights of both North Western and former M & St L employees or would necessitate changes in their collective bargaining agreements limiting their respective seniority rights to defined geographical districts or yards (R. 8, 65-67, 246-247, 340). The Court of Appeals said (Appendix p. 23a):

> "It is agreed that the unification of the yards at Marshalltown will affect the seniority rights of the employees who are presently assigned to those yards. Their seniority rights arise out of separate collective bargaining agreements with North Western and M & St L, and consequently they do not apply uniformly to both groups of employees."

The Railway Labor Act provides that (45 U.S.C., Sec. 2, Seventh):

> "No carrier, its officers or agents shall change the rates of pay, rules, or working conditions of its employees except in the manner prescribed in such agreements or in Section 6 of this Act."

North Western denied that its bulletin of the proposed change was a Section 6 notice under the Railway Labor Act and asserted that the Railway Labor Act was "inapplicable" by reason of the Interstate Commerce Act and the proceedings before the Interstate Commerce Commission (R. 8-19, 46, 337).

Failing to reach a settlement, North Western advised the employees that it intended to submit the controversy to arbitration "as provided in Section 13 of the Agreement of May 1936, Washington, D. C., as revised by Agreement of August 4, 1960" (R. 270). The employees directed attention to the fact that the

arbitration provisions of the Washington Agreement were limited to disputes concerning the "protection" afforded by it and that the agreement did not contain any provision for arbitrating changes in their collective agreements defining their seniority rights (R. 203, 282).

North Western thereafter notified the employees that it had designated one of its officers to serve on the proposed arbitration committee (R. 271). The employees did not designate a member for the proposed board and North Western thereupon requested the National Mediation Board to designate a neutral member of the proposed arbitration committee (R. 277-278). The Mediation Board arranged and held a conference with the parties in Chicago, Illinois, on May 18, 1961. While it made no formal ruling or written denial of North Western's request, it did not accede to the request or act to appoint a neutral arbitrator (R. 17, 296, 330, 338).

On July 14, 1961, North Western filed its complaint in the Federal District Court for the Southern District of Iowa against petitioners as the collective bargaining representatives of the employees involved (R. 1-20). Jurisdiction was founded on the alleged existence of a federal question under Sections 1331 and 1337, 28 U.S.C. (R. 45-46).[6] The matter in controversy was said to arise under the Interstate Commerce Act, 49 U.S.C., Sections 1 *et seq.*, the Railway Labor Act, 45 U.S.C., Sections 151 *et seq.*, and Section 301 of the Labor Management Relations Act, 29 U.S.C., Section 185 (R. 46).

The complaint sets forth the report and order of the Interstate Commerce Commission relating to the ac-

[6] Diversity jurisdiction, originally alleged, was later eliminated by amendment (R. 2, 45-46).

quisition of M & St L by North Western, the "Stipulation and Agreement" incorporating the Washington Agreement of 1936, alleges the geographical limits of the seniority rights of the employees involved, the general outlines of the dispute, and prays for a declaratory judgment that the court "declare the legal rights of the parties", that the court "declare that the Railway Labor Act is inapplicable to the proposed coordination of plaintiff's Marshalltown yards", and that the court "declare that pursuant to the order of the Interstate Commerce Commission * * * and the stipulation of August 4, 1960, the proposed coordination be lawfully effectuated in accordance with said order and the procedures prescribed in said stipulation and the Washington Agreement" (R. 1-20, 45-46).

Petitioners filed a motion to dismiss the complaint for lack of jurisdiction (R. 20-24). The trial court overruled it, saying in part (R. 31):

> "The controversy between the parties hereinbefore set out involves the *interpretation of the effect of* Section 5 (11) of the Interstate Commerce Act (49 U.S.C., Sec. 5 (11)) *upon the order* of the Interstate Commerce Commission approving the merger, which included *as a part thereof*, a stipulation entered into by the parties herein for the protection of employees as contemplated by Section 5 (2)(f) of the Act."[7]

The allegations of the complaint and the several kinds of relief sought were sufficiently general to permit respondent to advance different and inconsistent contentions regarding its interpretation of the Interstate Commerce Act. Thus respondent argued, first, that Section 5 (11), automatically and as a matter of

[7] Emphasis is supplied in this petition unless otherwise noted.

law, rendered the Railway Labor Act "inapplicable" and relieved the respondent of its obligations of collective bargaining agreements negotiated thereunder. The same argument was made by respondent in the Court of Appeals. The first black face heading of respondent's printed brief in the Court of Appeals, followed by some 23 pages of argument, reads:

> "In accordance with the provisions of Section 5 (11) of the Interstate Commerce Act, the proposed consolidation of North Western's Marshalltown yards may be carried into effect free from any restraints, limitations or prohibitions of the Railway Labor Act, or contracts entered into thereunder."

The objective of the argument was that the trial court should adjudicate the effect of Section 5 (11) on respondent's obligations relating to contractual seniority rights and enter a declaratory judgment relieving respondent of such obligations. Accordingly, respondent did not seek arbitration of the dispute whether the Washington Agreement modified the seniority provisions of other collective agreements and, as alleged in the complaint, proposed to confine arbitration to the "task" of determining "an equitable formula for assigning the remaining positions in the coordinated operations * * *" (R. 10).

The alternative argument advanced by respondent was that Sections 5 (2)(f) and 5 (11) of the Interstate Commerce Act conferred power on the Interstate Commerce Commission to relieve respondent of its obligations as to the seniority rights of its employees and to impose compulsory arbitration of new assignments. Respondent urged that the court should read Section 5 of the Washington Agreement as though it

was a part of the order issued by the Commission, and should then judicially interpret the "order" as nullifying seniority rights by Commission "directive". Under its alternative theory, the respondent again did not propose to arbitrate the issue of whether seniority rights were modified by the Washington Agreement and, on the contrary treated such contractual rights as having been abrogated by the Commission "order", leaving only the reassignment formula for arbitration.

The District Court, following a trial in which substantially all evidence was documentary, entered a "Memorandum of Decision and Order for Judgment" granting the relief prayed in the Complaint (R. 331-346). The Court found and concluded that: (1) North Western was relieved from the requirements of the Railway Labor Act by Section 5(11) of the Interstate Commerce Act (R. 341); (2) that contractual seniority rights must yield to the "plenary and exclusive authority" of the Interstate Commerce Commission, and that the Commission had power to impose conditions "in conflict with existing collective bargaining contracts establishing seniority rights" (R. 340, 341); (3) that petitioners agreed by stipulation "as a part of the merger to submit the problem of displacement or rearrangement of employees to eventual compulsory arbitration" (R. 342); and (4) that the stipulation of the parties for protection of employees had been "approved" and "authorized by the Interstate Commerce Commission in its order approving the merger under the provisions of Section 5(2)(f), and Section 5(11) of the Interstate Commerce Act" and had been incorporated in the order "as a part thereof" (R. 338, 339, 342).

The District Court concluded that (R. 342):

> "The problem is not one of interpretation of collective agreements, but as heretofore set out, primarily involves the interpretation and effect of Section 5(11) of the Interstate Commerce Act on an agreement for the protection of employees approved by the Interstate Commerce Commission under Section 5(2) of the Act".

The judgment entered by the District Court declared the Railway Labor Act "inapplicable to the proposed coordination of plaintiff's Marshalltown railroad yards" and directed that the parties "follow the procedures prescribed in the stipulation entered into on August 4, 1960 and filed in Finance Docket No. 21115 before the Interstate Commerce Commission" (R. 343).

Petitioners filed a motion for new trial challenging the material conclusions of the court and its judgment (R. 346-347). At the hearing on this motion petitioners called attention to the fact that while the court had in effect ordered specific performance of the arbitration provisions of the stipulation it was uncertain, in view of the findings, conclusions and decree, what issues remained for arbitration, if any. (R. 348-351). The court denied the motion for new trial without opinion and without revision or clarification of its decree (R. 351).

The Court of Appeals for the Eighth Circuit, in affirming the judgment, held that the controversy involved the Commission's "right" to make employee protective provisions "in conflict with existing collective bargaining agreements and the prescribed procedures set forth in the Railway Labor Act" (Appen-

dix, p. 20a). It stated that "the basic issue" is (Appendix, p. 24a):

> "* * * whether the statutory authority conferred upon the ICC by the Interstate Commerce Act to approve and facilitate mergers of carriers includes the power to authorize changes in working conditions necessary to effectuate such mergers."

In answering this question in the affirmative, the Court of Appeals interpreted the decision of this court in *Railway Labor Executives' Association* v. *United States*, 339 U.S. 142, as indicating that (Appendix, p. 28a):

> "* * * the ICC power to authorize mergers would be completely ineffective if authority to adjust work realignments through fair compensation did not exist."

The Court of Appeals further held that "the Railway Labor Act, if it applied, would threaten to prevent many consolidations" (Appendix p. 28a); that the provisions relating to mergers "take precedence over the provisions of the Railway Labor Act" (Appendix p. 29a); and that (Appendix pp. 29a-30a):

> "* * * Congress intended the ICC to have jurisdiction to prescribe the method for determining the solution of labor problems arising directly out of approved mergers."

The Court of Appeals also held that the ICC had frequently provided for "compulsory arbitration" to settle "labor disputes" arising out of "mergers", and concluded that the District Court (Appendix, p. 34a):

> "* * * committed no error in holding that the Commission acted within its jurisdiction in pro-

viding for the adjustment of *labor disputes* arising out of the approved merger; and that the court correctly decided that the parties to the action should follow the procedures prescribed by the stipulation approved and adopted by the Commission."

Petitioners filed a timely petition for a rehearing in the Court of Appeals which it denied without opinion. (Appendix p. 34a(2)).

REASONS FOR GRANTING THE WRIT

The Judgment of the Courts Below Decides Important Questions of Federal Law Involving the Interpretation and Administration of the Railway Labor Act and the Interstate Commerce Act.

It would be impossible to overstate the profound impact on labor relations in the railroad industry if the judgment below is permitted to stand. The revolutionary interpretations placed on the Railway Labor Act and the Interstate Commerce Act, combined with the misconceptions of settled administrative and judicial construction of these statutes will create confusion and unrest in railway labor relations for years to come.

The decision below, in holding that the Interstate Commerce Commission is empowered to deal with "labor disputes" arising out of or following Section 5(2) transactions, overturned the settled administrative interpretation and practice of the Interstate Commerce Commission to the contrary. In 1958 the Commission rejected substantially the same contentions now made by this respondent in a proceeding before the Commission involving the respondent's lease of the Chicago, Saint Paul, Minneapolis and Omaha Railway

Company. The decision of the Commission in that proceeding is reported in 295 I.C.C. 696, and is reproduced in full in the Appendix to this petition at page 39a *et seq.*

In *City of Nashville, Tennessee* v. *United States*, 155 F. Supp. 98, affirmed in 355 U.S. 63, a three-judge court also recorded the Commission's views, as expressed by its counsel, in finding of Fact No. 15 which reads in part as follows:

> "Toward the conclusion of a lengthy colloquy concerning the protection of rights of the Nashville, Chattanooga & St. Louis Railway employees, counsel for the Interstate Commerce Commission, Robert W. Ginnane, Esquire, made the statement that the Commission is *without power*, in connection with a reorganization to *tell carriers who shall or shall not be laid off as a result of the merger*. He stated further that the Commission's power and responsibility are limited to specifying protection of those who are laid off, the choice of those laid off being left to the managerial discretion of the carriers *as limited by their collective bargaining agreements*."

The Court of Appeals sought administrative support for its conclusions by the assertion that (Appendix p. 32):

> "The ICC has many times provided for compulsory arbitration to settle *labor disputes* arising out of mergers where the parties have been unable to agree. See *Arnold* v. *Louisville & Nashville R.R.*, D.C. M.D. Tenn., 180 F. Supp. 429, 435-36."

This statement and the citation of the *Arnold* case as authority for it evidences the deep confusion of the court. In *Arnold* (affirmed in *Batts* v. *Louisville & Nashville Railroad Co.*, 6 Cir., 316 F. 2d 22), the

court was dealing with and had reference only to arbitration of individual claims for protective benefits and did not have before it a railway labor dispute governed by the Railway Labor Act.

The arbitration orders entered by the Commission, as a part of the protective conditions imposed on carriers in merger transactions, are confined to arbitration of the claims of individual employees to protective benefits. Such conditions in protective orders are made by the Commission to avoid forcing individual claimants to the expense of suits in court to establish their claims. *New Orleans & Northeastern R.R.* v. *Bozeman*, 5 Cir., 312 F. 2d 264; *Arnold* v. *Louisville & Nashville R.R.*, 180 F. Supp. 429, and *Louisville & Nashville Railroad* v. *Cantrell*, 44 L.C. Par. 17, 370, both affirmed in *Batts* v. *Louisville and Nashville Railroad Company*, 6 Cir., 316 F. 2d 22; *City of Nashville, Tennessee* v. *United States*, 155 F. Supp. 98, affirmed in 355 U.S. 63.

The distinction emphasized by the foregoing authorities is illustrated by comparing the decision of the Fifth Circuit in *New Orleans & Northeastern R.R.* v. *Bozeman*, 5 Cir., 312 F. 2d 264, decided January 12, 1963, with its earlier decision of July 6, 1962, in *Texas & N. O. R.* v. *Brotherhood of Railroad Trainmen*, 5 Cir., 307 F. 2d 151, certiorari denied January 7, 1963, in 371 U.S. 952. The *Bozeman* case involved claims of individual employees for benefits provided by an order of the Interstate Commerce Commission. The *Texas* case involved a railway labor dispute arising by reason of Commission approval of a Section 5(2) transaction. Many of the same contentions regarding interpretation of the Interstate Commerce Act which are advanced here by North Western were advanced to

and rejected by the Fifth Circuit in its decision in the *Texas* case. It may be that the facts involved in *Texas* are so different as to prevent the assertion of direct conflict between that decision and the decision of the Eighth Circuit to which this petition is filed. Nevertheless, it is clear that in rejecting *Texas* and in relying on *Bozeman* the Eighth Circuit evidenced a complete misunderstanding of both decisions.

It does not require extended discussion to indicate the confusion of equating compulsory arbitration of "protective benefits" by individual claimants with compulsory arbitration of "labor disputes" involving collective bargaining representatives of railway crafts and their contracts governing seniority and other working conditions. This confusion pervades the interpretation placed on the Interstate Commerce Act by the courts below. Such an interpretation attributes to Congress an intent to discard seventy-five years of elaborate and specialized railway labor legislation, and of replacing it by only three sentences in Section 5(2)(f) and one phrase in Section 5(11) of the Interstate Commerce Act. Congress is said to have thereby intended to transfer to the Interstate Commerce Commission power to deal with railway labor disputes in its uncontrolled discretion and with peremptory and unlimited authority.

The result of such confusion can be nothing short of chaos. The Interstate Commerce Commission would embark on an uncharted sea in which it has no specialized competence, no statutory direction, and no administrative organization. This radical departure in the handling of railway labor relations by construction of an Act not designed by Congress to provide procedures for dealing with railway labor disputes should

not, we submit, be permitted to continue in force. It will inevitably generate many new and serious problems.

It is respectfully submitted that the suggestion that Congress enacted the elaborate legislation of the Railway Labor Act for dealing with railway labor disputes only to reject it with respect to Section 5(2) transactions under the Interstate Commerce Act, by tersely labeling it a "restraint, limitation or prohibition", ascribes to Congress an incredible contradiction in legislative policy which is said to have been expressed in an incongruous choice of language. We submit that such a construction, by reason of the problems presented by it, warrants the consideration of this court.

Whatever may be argued concerning the applicability of Section 5(11) to the Railway Labor Act finds even less support when that provision of the Interstate Commerce Act is applied, as it was by the courts below, so as to relieve rail carriers of the obligations of collective bargaining agreements. On its face, the language "restraints, limitations or prohibitions *of law*" appears completely irrelevant to restraints or limitations imposed by contracts. Yet the lower courts predicate their conclusion that such restraints and limitations are nullified solely on Section 5(11). It is submitted that the authorities cited by the courts below do not support this conclusion.

The Judgment of the Court Below Is in Conflict With Applicable Decisions of This Court.

In a number of decisions this court has held that controversies concerning the interpretation or application of railway collective bargaining agreements are not justiciable and must be left for solution by the

administrative procedures provided in the Railway Labor Act. *General Committee etc.* v. *Missouri-Kansas-Texas R. Co.*, 320 U.S. 323; *General Committee* v. *Southern Pacific Co.*, 320 U.S. 338; *Switchmen's Union of North America* v. *National Mediation Board*, 320 U.S. 297; *Slocum* v. *Delaware, L. & W. R. Co.*, 339 U.S. 239; *Order of Railway Conductors* v. *Southern Railway*, 339 U.S. 255; *Order of Railway Conductors* v. *Pitney*, 326 U.S. 561; and see *Brotherhood of L. E.* v. *Missouri-Kansas-Texas R. Co.*, 363 U.S. 528.

The Washington Agreement of 1936 is a railway collective bargaining agreement. *Railway Labor Executives Association* v. *United States*, 339 U.S. 142, 147; *Railroad Telegraphers* v. *Chicago & N.W. R. Co.*, 362 U.S. 330, 337-339. It is submitted that in interpreting and applying the agreement and in adjudicating the controversy between the parties as to its meaning and effect both courts acted in direct disobedience to the decision of this court.

Whether a railway labor agreement may be judicially enforced by an order entered for specific performance of its provisions for voluntary arbitration is believed to present a question of first impression. Section 301 of the Labor Management Relations Act (29 U.S.C., Section 185) is not applicable to railway labor collective agreements by definition and by exemption. 29 U.S.C., Sections 141, 142, 152, 182, 185;

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[*] In construing Section 5 of the Washington Agreement as an "implicit" modification of seniority rights defined in other collective agreements the courts below disregarded any inconsistency of their interpretation as against similar terminology in Section 12, the specific recognition in other paragraphs of the "normal exercise of seniority" as provided by "existing agreements", and limitations of arbitration to the "protection" provided by the Agreement (R. 208, 210, 213, 214, 217, 281-283). These were issues to be submitted to the National Railroad Adjustment Board and were not for judicial consideration and determination.

Local Union No. 25 v. New York, N.H. & H.R. Co., 350 U.S. 155; *California v. Taylor*, 353 U.S. 553. In purporting to order specific performance of a voluntary railway labor arbitration agreement the courts below acted without statutory authority and in conflict with applicable and governing decisions of this court interpreting the Railway Labor Act.

Irrespective of the question whether the dispute concerning the interpretation and application of the Washington Agreement should be determined by the National Railroad Adjustment Board as opposed to an arbitrator, at least in the first instance, the lower courts also were seriously in error in adjudicating some of the issues in dispute and relegating others to arbitration. If it were to be assumed, arguendo, that federal courts have authority to order specific performance of railway collective bargaining agreements for voluntary arbitration, it is submitted that the entire dispute necessarily must be submitted to the arbitrator for decision, unprejudiced either by adjudication of part of it or even by expression of judicial dicta as to its merit.

CONCLUSION

For the foregoing reasons, this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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